

Exhibit 2

**UNITED STATES DISTRICT COURT
SOUTHER DISTRICT OF NEW YORK**

In Re: Methyl Tertiary Butyl Ether (MTBE")

MDL No. 1358

Product Liability Litigation

Master File C.A. No. 1.00-1898(CAS)

Case No. 04-CV-3417(SAS)

This document relates to the following cases:

City of New York v. Amara Hess Corp., et al.

Expert Rebuttal Report Of Bruce F. Burke

**Nexant, Inc.
44 South Broadway
White Plains, New York 10601**



February 6, 2009

Signature

Date

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QUALIFICATIONS

1. My name is Bruce Francis Burke. My address is: Nexant Inc., 44 South Broadway, Fourth Floor, White Plains, New York 10601.
2. I am a Vice President of the Energy Resources Practice at Nexant Inc., a firm specializing in the provision of management and technical consulting services to the global energy sector. I currently have responsibility for energy-related consulting assignments in North and South America as well as Asia. I have more than thirty years of experience working in the refining and petrochemical industries.
3. On December 19, 2008 I submitted an expert report in this matter, herein referred to as the Burke Report. I detailed my qualifications and compensation in that report.
4. In preparing this rebuttal report, I have relied on many of the references used in my original report, the Burke Report. Where new references have been used, I have cited them. I also reviewed the Expert Reports of John B. O'Brien, James L. Sweeney, Robert N. Stavins, Thomas C. Austin, each issued on January 23, 2009, and the Expert Report of Richard D. Wilson, issued on January 16, 2009.
5. The primary purpose of this rebuttal report is to address certain elements of the O'Brien report. My opinions formed in this case rely, in large part, on my experience in working in the refining industry and in consulting to the refining industry over the past 32 years.
6. I reserve the right to expand or modify these opinions in light of any new information I receive or review.

SCOPE OF OPINIONS

7. In my Expert Report, the Burke Report, issued December 19, 2009, I was asked to consider several questions. *First*, I was asked to provide a high level profile of the basis for gasoline manufacture in the United States, including the use of oxygenates in motor gasoline in the United States. *Second*, I was asked to provide an opinion as to whether the domestic refining industry could have utilized ethanol instead of MTBE to meet requirements of the Oxygenated Fuels Program and Amendments to the United States Clean Air Act regarding the Reformulated Gasoline Program which went into force during 1992 and 1995, respectively. *Third*, I was asked to describe the gasoline distribution system in the United States, and specifically to review how gasoline is delivered to the Relevant Geographic Area (RGA) in Queens. *Fourth*, I was asked to provide an opinion regarding whether some of the MTBE-gasoline released into the groundwater in the RGA can be attributed, over the period from 1979 to 2003, as having been manufactured by the Defendants. *Finally*, I was asked to review and summarize the volumes of gasoline, and in particular MTBE-gasoline, that Defendants manufactured and, over time, was supplied to the RGA since 1979.
8. My analysis and opinions regarding the above matters were set out in the Burke Report. I have since been asked to review and, where relevant, comment on the rebuttal report of Mr. O'Brien. This Expert Rebuttal Report sets out my reactions and opinions

with regard to Mr. O'Brien's Report. The fact that I have not commented on a specific topic or opinion in the O'Brien Report, or in each of the other reports (Sweeney, Stavins, Austin, and Wilson) should not be taken as my agreement with those reports' statements or opinions.

CONCLUSIONS

9. Based on my review of the above-referenced reports, I have not changed the opinions presented in my expert report (the Burke Report), which are summarized herein.

10. Based on a review of the facts and my over 30 years of experience, I conclude that the domestic refining industry could have utilized ethanol instead of MTBE to meet requirements of the Oxygenated Fuels and Reformulated Gasoline Programs which went into force during 1992 and 1995, respectively. Key reasons for this conclusion are:

- I have reviewed the technical requirements that would have been required for the gasoline manufacturing industry to have produced and utilized ethanol-gasoline in place of MTBE-gasoline. I have concluded that all technical challenges, while in some cases significant, could have been addressed in a timely manner such that sufficient ethanol could have been produced and distributed to meet the 1992 and 1995 target dates for the two main oxygenated gasoline programs
- In my opinion, the ability of the gasoline supply system to make the transition from MTBE to ethanol-gasoline over the last few years, in a relatively easy manner, provides an important demonstration that ethanol could have been utilized during the 1980s and early 1990s when decisions were being made to utilize MTBE

11. Second, because gasoline supplied to the RGA has been repeatedly comingled from multiple sources and at multiple locations from the point of manufacture (refineries) through receiving tanks, pipelines, barges, distribution terminals, product terminals, and in the trucks that deliver to retail service stations, it is reasonable to conclude that, over time, gasoline produced by any manufacturer that supplied MTBE-gasoline into the overall system that supplies the RGA also supplied the RGA with MTBE-gasoline. Therefore it is more likely than not that Defendant's MTBE-gasoline was released in the RGA, that any particular release contains multiple Defendants' gasoline, that it is impossible to tell from any chemical or other characteristic who manufactures the gasoline in any particular release, and that for the Defendants that supplied MTBE gasoline into the gasoline distribution system that supplied the RGA, over time it is a virtual certainty that their MTBE-gasoline is present in any release that occurred while they were doing that supplying. The fact that Defendants did not have title to the gasoline delivered to the RGA or did not know that it was delivered to the RGA does not change the validity of this conclusion.

CONCLUSIONS

32. Based on my review of the above-referenced reports, I have not changed the opinions presented in my expert report (the Burke Report), which are summarized herein.

33. Based on a review of the facts and my over 30 years of experience, I conclude that the domestic refining industry could have utilized ethanol instead of MTBE to meet requirements of the Oxygenated Fuels and Reformulated Gasoline Programs which went into force during 1992 and 1995, respectively. Key reasons for this conclusion are:

- I have reviewed the technical requirements that would have been required for the gasoline manufacturing industry to have produced and utilized ethanol-gasoline in place of MTBE-gasoline. I have concluded that all technical challenges, while in some cases significant, could have been addressed in a timely manner such that sufficient ethanol could have been produced and distributed to meet the 1992 and 1995 target dates for the two main oxygenated gasoline programs
- In my opinion, the ability of the gasoline supply system to make the transition from MTBE to ethanol-gasoline over the last few years, in a relatively easy manner, provides an important demonstration that ethanol could have been utilized during the 1980s and early 1990s when decisions were being made to utilize MTBE

34. Second, because gasoline supplied to the RGA has been repeatedly comingled from multiple sources and at multiple locations from the point of manufacture (refineries) through receiving tanks, pipelines, barges, distribution terminals, product terminals, and in the trucks that deliver to retail service stations, it is reasonable to conclude that, over time, gasoline produced by any manufacturer that supplied MTBE-gasoline into the overall system that supplies the RGA also supplied the RGA with MTBE-gasoline. Therefore it is more likely than not that Defendant's MTBE-gasoline was released in the RGA, that any particular release contains multiple Defendants' gasoline, that it is impossible to tell from any chemical or other characteristic who manufactures the gasoline in any particular release, and that for the Defendants that supplied MTBE gasoline into the gasoline distribution system that supplied the RGA, over time it is a virtual certainty that their MTBE-gasoline is present in any release that occurred while they were doing that supplying. The fact that Defendants did not have title to the gasoline delivered to the RGA or did not know that it was delivered to the RGA does not change the validity of this conclusion.

I affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.



Bruce F. Burke
White Plains, New York
January 6, 2009